No. 16439

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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GUY N. STAFFORD,

*Plaintiff and Appellant,*

*vs.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, *et al.*,

*Defendants and Appellees.*

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## APPELLEES' BRIEF.

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### Terminology.

In this brief the defendants and appellees, Superior Court of the State of California, in and for the County of Los Angeles, and Peter J. Pitchess, as Sheriff of the County of Los Angeles, will hereinafter usually be referred to respectively as: "defendant Superior Court" and "defendant Sheriff," collectively as "appellees." Plaintiff and appellant, Guy N. Stafford, will usually be referred to as "plaintiff." The lower court and judge from whose judgment this appeal is prosecuted (Federal District Court, Southern District, Central Division per Judge Harrison), will usually be referred to as "court below" or "lower court." The transcript of record before this Court will be referred to as "record" and abbreviated as "[T. R. p. .....]." The first amended complaint [T. R. p. 32] will

be referred to as "amended complaint" and the original complaint in this action [T. R. p. 2] will be so termed. The numerous purported party defendants whom Stafford has requested the lower court to permit him to join in the Amended Complaint (which request has not been granted, see *infra* p. 3) will usually be referred to as the "additional defendants." Plaintiff's "Appellant's Opening Brief" will usually be referred to as "opening brief" and abbreviated "[Applt's. Op. Br. p. .....]." References to the record and to the opening brief will be in brackets.

## Introductory.

This brief, after supplementing plaintiff's statement of the proceedings below and stating the basic question, will summarize appellees' argument, and then discuss the various causes of action in the Amended Complaint stating and applying the relevant principles of law.

## I.

## Statement of Pleadings and Occurrences Below.

Plaintiff has given the record history of the instant action from the filing of the original complaint down to the taking of his appeal from the lower court's Judgment of Dismissal Without Prejudice of the action entered on March 12, 1959 [T. R. p. 73]. Prior to this a Judgment of Dismissal Without Prejudice of this action was filed on July 15, 1958 [T. R. p. 31]. At that time, the Complaint on file named only defendant Superior Court and Eugene W. Biscailuz (then Sheriff) as defendant Sheriff as parties [T. R. p. 2]. That Complaint consisted of three causes of action. The first two causes of action asking declaratory relief from a series of rulings and judgments of defendant Superior Court commencing with Los An-

geles Superior Court No. 478480 in the year 1946 down to and including denial of plaintiff's Petition for Habeas Corpus on May 5, 1958 [Complaint, Par. XXIV, T. R. p. 18]. The third cause of action asked an injunction against defendant Superior Court and defendant Sheriff to prevent the carrying out of a Judgment of Contempt [Complaint, Par. VI, T. R. p. 21]. It should be noted that following denial of the plaintiff's Petition for Habeas Corpus in the California courts, plaintiff's Petition for Writ of Certiorari to the Supreme Court of the United States was denied (see *infra* No. 7, p. 9).

The Amended Complaint was filed January 27, 1959 [T. R. p. 32], but nowhere in the record does it appear that permission was granted by the District Court for such filing. Appellees' motion to dismiss the amended complaint [T. R. p. 61] and the judgment of dismissal following the hearing on that motion does not constitute such judicial permission as the lower court's judgment dismisses the entire action [Judgment of Dismissal, T. R. p. 72]. No action was taken by the lower court directed expressly to plaintiff's motion to add the additional parties named in the amended complaint. The judgment appealed from is consistent with the earlier judgment at the time of the original Complaint for that judgment also dismisses the action [T. R. p. 31].

We point out these additions to plaintiff's statement of proceedings [Applt's. Op. Br. pp. 1-2] because they show that the amended complaint should be viewed without considering the additional defendants and causes of action against them since said defendants and causes of action were not properly before the lower court [Amended Complaint, T. R. p. 32, Causes of Action—Second, Third and Fourth].

## II.
## Question Presented.

At the hearing below on appellees' Motion to Dismiss the Amended Complaint did the Federal District Court have jurisdiction of the action?

We submit the answer to this question is "no" and that under no view, whether with or without the additional defendants, and causes of action directed against them does the Amended Complaint present an action within the jurisdiction of the lower court.

## III.
## Summary of Argument.

### A. General.

The basic nature of the original Complaint and of the Amended Complaint remain the same despite the new and different causes of action now present.

Plaintiff's Amended Complaint ignores the settled limits of a Federal District Court's jurisdiction. The same is original and does not comprise reviewing the actions of state courts. If the federal questions which plaintiff speaks of existed, they were present in the numerous state court actions after the decisions rendered by defendant Superior Court which plaintiff contends were in violation of his federally given rights. To that extent all federal questions have been resolved by higher state court decisions. Review was then available by certiorari of all of defendant Superior Court's actions insofar as such actions violated federal rights. Plaintiff cannot now, by indirection reassert these concluded federal questions to an improper tribunal.

The courts of California in allowing plaintiff some thirteen years of litigation and at least ten reported appellate

decisions have more than complied with due process requirements as to equal protection. Plaintiff nowhere alleges or shows that he represents any class, group or race which is receiving from the courts of California other and different treatment from other classes, groups or races based on or because of such differences.

### B. Amended Complaint Reviewed.

The key cause of action from a substantive standpoint is the first. In this First Cause of Action, plaintiff in 46 numbered paragraphs sets out in a mixture of allegations of fact, conclusions of law, opinion and inference a rough narrative of over a decade of litigation with private individuals and toward the end of said period with appellees and other state functionaries. During this time, as appears from the Amended Complaint, he has reiterated in an impressive number of actions contentions ruled adversely to him in the first years of this litigation. Defendant Superior Court, to prevent further imposition on its judicial processes, was compelled to first enjoin plaintiff from further fruitless litigation of said contentions and subsequently hold him in contempt for violation of the injunction. Declaratory relief is asked in that the Federal District Court is asked to review this mass of litigation and hold that defendant Superior Court has erroneously decided each and all of the questions presented by plaintiff.

The First Cause of Action is not a genuine cause of action for declaratory relief between bona fide contestants. The courts of California have no controversy or quarrel with plaintiff. Their decisions decide controversies and declare rights and duties. Their decisions may offend the unsuccessful litigant but he cannot predicate federal jurisdiction on the fact that questions of state law have been resolved against him.

The remaining five Causes of Action, each incorporate the First Cause of Action [Amended Complaint, Second Cause of Action, Par. I, T. R. p. 53; Third Cause of Action, Par. I, T. R. p. 55; Fourth Cause of Action, Par. I, T. R. pp. 55-56; Fifth Cause of Action, Par. I, T. R. p. 57; Sixth Cause of Action, Par. I, T. R. p. 57]. The Second Cause of Action simply takes certain of the state court proceedings alleged in the First Cause of Action and charges that certain of the additional defendants conspired to have achieved the decision rendered by defendant Superior Court in Los Angeles Superior Court No. 568668 and to so represent the facts and the law to defendant Superior Court as to cause it to deny due process of law to plaintiff. It concludes with an allegation that the conspiracy has been effective. The conspiracy allegations and those relating to federal rights are conclusionary in form and depend entirely upon proving the existence of the same by a review of the decisions of defendant Superior Court.

The Third Cause of Action simply adds to the Second a demand for additional money damages. It adds nothing legally speaking to the factual basis of the Amended Complaint and is totally insufficient to give a jurisdictional basis to this action.

The Fourth Cause of Action incorporates the Second Cause of Action and in so doing incorporates the paragraphs of the First Cause of Action detailing the various judicial decisions made by defendant Superior Court and other California courts. It states that the determinations made in three actions, Los Angeles Superior Court Nos. 478480, 516496 and 568668 were in excess of jurisdiction, in violation of constitutional inhibitions and void and that the parties to the Second Cause of Action should be restrained from asserting such determinations in any pro-

ceeding brought by plaintiff to enforce his property rights in the subject matter of those actions.

As in the case of the Second Cause of Action, this is the First Cause of Action in still other attire. To adjudicate it would again place the Court below in the position of reviewing the decisions of defendant Superior Court and the upper California courts who have considered the matter.

The Fifth Cause of Action asks an injunction against the judges of defendant Superior Court prohibiting them from committing plaintiff to jail pending a final determination of the instant action. Jurisdiction to issue the injunction sought is obviously predicated upon jurisdiction over the action and if that is lacking the jurisdictional question, *re:* the injunction, does not arise. We have argued that such is the case as to the preceding four causes of action and we shall similarly so argue as to the Sixth and final Cause of Action. Additionally, even granting jurisdiction existed over the action, the District Court would be within its rights under the circumstances of this case in refusing to issue said preliminary injunction.

The Sixth Cause of Action repeats the First Cause of Action and states plaintiff's conclusion that the contempt and *habeas corpus* decisions of defendant Superior Court and upper California courts were illegal and that therefore plaintiff is entitled to ask for a Writ of *Habeas Corpus* here. Not only is jurisdiction over this cause completely dependent on jurisdiction over the First Cause of Action, but further, the denial of certiorari by the Supreme Court of the United States concludes raising any federal issue here.

## IV.

## Plaintiff's State Court Litigation.

We do not burden this brief or the court with a lengthy recitation of the contentions made by plaintiff before the California courts over the years regarding the matters stated in the Amended Complaint but for the court's convenience we summarize chronologically the majority of such litigation. Of course, this court may take judicial notice of the appellate decisions listed below (*Grubbs v. Slater* [D. C. W. D., Ky., 1955], 144 Fed. Supp. 554, 562):

1. *Sanders v. Howard Park Co.,* 86 Cal. App. 2d 721, 195 P. 2d 898 (holds judgment in Los Angeles Superior Court No. 478480, valid).

2. *Coburg Oil Co. v. Russell,* 100 Cal. App. 2d 200, 223, P. 2d 305 (hearing denied California Supreme Court) (on appeal from judgment in Los Angeles Superior Court No. 516496, affirmed and judgment in Los Angeles Superior Court No. 478480 again held valid).

3. *Stafford v. Russell,* 117 Cal. App. 2d 319, 255 P. 2d 872 (hearing denied California Supreme Court), cert. den. 346 U. S. 926 (appeal from judgment in Los Angeles Superior Court No. 568668, holds judgments in Superior Court actions numbered 478480 and 516496 binding upon Stafford). The court said:

> "In the present case plaintiff reiterates the allegations of the previous two actions and raises the same questions that were previously raised in the prior actions where the rulings were adverse to him. Such adverse rulings are binding upon plaintiff herein and need not further be considered for the reason that though he was not a nominal party to the prior actions

the Coburg Oil Company was, and plaintiff had a proprietary and financial interest in the judgment and controlled the Coburg Oil Company's conduct in the actions.

"[1] Therefore this rule is applicable: A person who is not a party to an action but who controls the action is bound by the judgment where he has a proprietary or financial interest in the judgment or in the determination of a question of fact or law with reference to the same subject matter or transaction. (*Dillard v. McKnight,* 34 Cal. 2d 209, 216 [8] [209 P. 2d 387, 11 A.L.R. 2d 835].)" (117 Cal. App. 2d 320.)

4. *Stafford v. Russell,* 128 Cal. App. 2d 794, 276 P. 2d 41 (hearing denied California Supreme Court) (holds judgments in above three actions binding upon plaintiff).

5. *Coburg Oil Co. v. Russell,* 129 Cal. App. 2d 214, 276 P. 2d 637 (to the same effect).

6. *Coburg Oil Co. v. Russell,* 136 Cal. App. 2d 165, 288 P. 2d 305 (re-affirms holdings in former cases).

7. *In re Stafford,* 160 Cal. App. 2d 110, 324 P. 2d 967, cert. den. 358 U. S. 913, reh. 942 (Writ of *Habeas Corpus* denied and validity of judgment in Los Angeles Superior Court No. 568668 enjoining plaintiff from claiming interest in property and judgment of contempt affirmed).

8. *People ex rel., Dept. Pub. Works v. Ashby* (plaintiff intervener), 161 Cal. App. 2d 31, ..... P. 2d ....., cert. den. ..... U. S. ....., 3 L. Ed. 233 (appeal from orders growing out of plaintiff's attempt to intervene in condemnation proceeding denominated *People v. Ashby,* Los Angeles Superior Court No. 648612—appeal dismissed).

9. *People ex rel., Dept. Pub. Works v. Ashby* (Stafford intervener), 161 Cal. App. 2d 33, 325 P. 2d 1009 (appeal from orders growing out of plaintiff's attempt to intervene in condemnation proceeding denominated *People v. Ashby,* Los Angeles Superior Court No. 648612—appeal dismissed).

10. *People ex rel., Dept. Pub. Works v. Ashby* (Coburg Oil Co. intervener), 161 Cal. App. 2d 34 (hearing denied California Supreme Court) (appeal from orders growing out of plaintiff's attempt to intervene in condemnation proceeding denominated *People v. Ashby,* Los Angeles Superior Court No. 648612—appeal dismissed).

An inspection of the California reports shows that all of the charges made in the Amended Complaint have been disposed of by the foregoing decisions. The same adds nothing except conclusionary conspiracy allegations and bald statements regarding the supposed effect of the actions of the California courts on plaintiff's rights.

## V.

## The Federal District Court Had No Jurisdiction to Review the Actions of Defendant Superior Court in the Premises Stated in the Amended Complaint.

### A. Declaratory Relief and Conspiracy Allegations.

A request for redetermination and interpretation of a state court judgment (and of the proceedings leading thereto) amounts to nothing more than a request for review and to add the additional language that the state courts are contending for one interpretation of their proceedings and judgments and plaintiff for an interpretation that such proceedings and judgments are erroneous or void cannot modify or ameliorate the substance of plaintiff's demand so as to give the Federal District Court jurisdic-

tion under the Federal Declaratory Relief Act. And the conspiracy allegations do not give more substance to the Amended Complaint. In *Givens v. Moll* (C. A. 5th, 1949), 177 F. 2d 765 (rehearing denied), cert. den. 339 U. S. 964, plaintiff complained in the Federal Court that certain defendants conspired to obtain and obtained judgments in the state court in order to deprive plaintiff and others by state power of property without due process of law. The purpose of the scheme was alleged to be to defraud plaintiff and other heirs out of their rights in an estate. The Court of Appeals disposed of plaintiff's contentions regarding the state court judgments in the following language:

> "If appellant were right, every case brought to judgment in a state court could be made the basis of a suit in the federal court upon the ground of a federal question by the mere allegation that the state court judgment was obtained in violation of due process. That this is not, it cannot be, the law, is as clear upon principle as it is upon authority. It is well settled that federal courts are not competent or authorized to entertain original suits to review state court action on the ground that a state court's judgment is erroneous. It is particularly well settled that the claim that a state court's judgment is erroneous raises no federal question on which the jurisdiction of federal courts can be based." (177 F. 2d 767.)

In *Application of Heller* (D. C. M. D. P. A., 1941), 39 Fed. Supp. 310, 311, the District Court said:

> "* * * The specific charge is that fraud has been practiced upon her in the courts of the Commonwealth of Pennsylvania. This Court has no authority

> to review as on appeal any procedure or action in the courts of this Commonwealth, and it will not assume jurisdiction where such is the purpose." (39 Fed. Supp. 311.)

To the same effect was the decision by this Court in *Levy v. Sisson* (C. A. 9th, 1952), 198 F. 2d 73. See also *Porter v. Benison* (C. A. 10th, 1950), 180 F. 2d 523, 526, *cert. den.* 340 U. S. 817; *Smith v. Fourth National Bank of Tulsa* (C. C. A. 10th, 1944), 141 F. 2d 294, 295.

The necessity of reviewing federal questions arising in state court proceedings by petition or appeal to the Supreme Court of the United States rather than in the Federal District Court is pointed out in *Williams v. Tooke* (C. C. A. 5th, 1940), 108 F. 2d 758, 759 (rehearing denied). There a suit sought review of state court decisions relating to rights in land and oil leases on the grounds that the state court lacked jurisdiction to render its judgment and that the judgments made deprived plaintiff of property without due process of law and denied plaintiff equal protection of the law. The Federal District Court dismissed the action for want of jurisdiction and on appeal it was said by the Court of Appeals that:

> "The jurisdiction of the District Court is strictly original. It has no jurisdiction to reverse or modify the judgment of a state court. The errors complained of could be reviewed only by the Supreme Court. Rooker v. Fidelity Trust Co., 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362. It was the duty of the District Court to dismiss the suit. 28 U. S. C. A. §80." (108 F. 2d 759.)

The fact that plaintiff alleges that the judgments of defendant Superior Court in certain actions were void does

not entitle him to the original jurisdiction of the federal courts. What plaintiff does not mention but is a matter for judicial notice is that (1) under California law a void judgment can be challenged by appeal (*Phelan v. Superior Court,* 35 Cal. 2d 363, 366, 217 P. 2d 951) and that (2) this challenge has been presented to the upper courts of California on numerous occasions and the validity of the judgments and their binding effect on plaintiff has been repeatedly affirmed. We refer the court to the cases listed under point IV, *supra,* pages 8-10, and in particular to decisions listed as numbers 1, 2 and 3.

The grounds on which the Amended Complaint attacks the state court judgments, indispensable party not joined, improper binding effect on plaintiff, etc., are each and all matters for local law, and the California courts are the arbiters thereof. Procedural due process does not require more than following the appropriate rules of the form, and this has clearly been done (*Drawdy Investment Company v. Leonard* [C. A. 5th, 1958], 261 F. 2d 228).

### B. Civil Rights.

From plaintiff's opening brief it appears he looks to his Second Cause of Action as stating a claim under the civil rights act [Applt's. Op. Br. p. 13]. It is true as stated by this court in the case of *Agnew v. City of Compton* (C. A. 9th, 1956), 239 F. 2d 226 [cited Applt's. Op. Br. pp. 11, 13], that a complaint can be drawn so as to seek recovery under the Constitution and laws of the United States, but it is also true as appears from that case that the Complaint must state facts as well as conclusionary allegations. The case of *Grubbs v. Slater* (D. C. W. D., Ky., 1955), 144 Fed. Supp. 554, cited *supra,* page 8, is most apposite. In that case plaintiff filed a petition nam-

ing as defendants certain private individuals, private newspaper corporations together with the attorneys for said corporations, judges in prior civil actions between plaintiff and said corporations and the court clerk. The petition charged that in prior civil actions, pursuant to conspiracy, null and void judgments were entered against him. Plaintiff proposed to show how these individuals had conspired to cause the courts to deny him his rights under the law. The court discussed the allegations and the applicable law carefully and at considerable length. It pointed out that the corporation's attorneys' acts were not the acts of the state and that, therefore, no federal questions arose under the due process clause in that respect. It then showed that the state of the law conferred immunity on the judicial officers. It concluded by showing that the corporations were not clothed with state power and that, therefore, their alleged wrongful acts were private wrongs. Among the more pertinent language was the following:

> "In the case of Moffett v. Commerce Trust Company, 8 Cir., 187 F. 2d 242, 248, the Court said:
>
> "Plaintiff's allegations that the decisions of the various State courts in litigation in which she was involved were void or arbitrarily or willfully made merely expresses an opinion not uncommon among defeated litigants, and, as appears from the face of the complaint, not entertained by the State Supreme Courts which reviewed the judgments. The charge that the State Court judgments were intentionally and purposefully against plaintiff, aside from the fact that the language used would apply equally as well to the decision of any court, right or wrong, adds nothing to the force or effect of the complaint." (144 Fed. Supp. 561.)

"[1, 2] Federal Courts take judicial knowledge of the decisions of all Courts (State and Federal but not foreign) and of the facts that limit each decision. Armstrong v. Alliance Trust Company, 5 Cir., 126 F. 2d 164. Therefore, the Court takes judicial knowledge and notice of the cases in the Kentucky Court of Appeals. The first case is Grubbs v. Slater, Ky., 266 S. W. 2d 85. The second case is that of Grubbs v. Slater & Gilroy, Inc., Ky., 267 S. W. 2d 754." (144 Fed. Supp. 562.)

"[5] It was said by Judge McAllister in McShane v. Moldovan, 6 Cir., 172 F. 2d 1016, referring with approval to the case of Botonne v. Lindsley, supra, that it was doubtful that a judge acting in his official capacity even in concert with officers of his court acts under color of state law in the trial of a case between private parties, thereby distinguishing Botonne v. Lindsley with McShane v. Moldovan, the latter being a case arising out of criminal prosecution and he continued to say that in a civil action where plaintiff claimed a deprivation of due process and equal protection of the law in a state trial court he had no just complaint where the case was appealed to the State Supreme Court and the judgment of the lower court is affirmed. That circumstance is true in the case at bar." (144 Fed. Supp. 564.)

In substance the above case is analogous to ours. In both a conspiracy was charged and the wrongs alleged committed were supposedly improper state court decisions. There is an absence of specification in the Amended Complaint of any acts or facts on the part of the private individuals sought to be joined which impeded or impaired

state court justice. Those allegations attempting to make this facet of plaintiff's case show no more than that the parties concerned were involved in judicial proceedings and represented their own interests. There is nothing to show that prejudice, bias or denial of right occurred as to the plaintiff, save the fact that he has, by relitigating the same issues in a series of cases, compiled a heavy score of decisions against his position.

We submit the Civil Rights Act is not properly invoked by plaintiff, and is an attempt to give color to federal jurisdiction where the matters complained of are clearly within the province of the state.

We have no quarrel with the numerous cases cited by plaintiff in his opening brief, but we do not believe that they take away from or impair the authorities and principles stated herein. On the contrary, the very cases cited by plaintiff substantiate the views stated in this brief.

In particular, plaintiff relies on *Shelley v. Kraemer* (1948), 334 U. S. 1 [cited Applt's. Op. Br. p. 11]. This case involved the propriety of a state court judgment enforcing the racial provisions of restrictive covenants entered into by property owners. The state court judgment in effect gave state sanction to discrimination against Negroes on account of their race. Accordingly, such state action was in conflict with the equal protection and other clauses of the Federal Constitution. Such is not the case nor alleged to be the case here. The decision arose on certiorari. In our case, original review is sought in the Federal District Court, and there are no allegations going to the class effect of the state court action.

*Griffin v. Griffin* (1946), 327 U. S. 220 [cited Applt's. Op. Br. p. 11], holds that the jurisdictional basis of a

state court judgment can be re-examined when it is sought to give that judgment effect by suit in the federal court. The action involved the Full Faith and Credit clause of the Constitution. That clause is not involved in our case. No one is attempting to enforce these state court judgments in the present action.

Plaintiff apparently relies on *Agnew v. City of Compton* (C. A. 9th, 1956), 239 F. 2d 226. This case does not aid plaintiff. Despite the general statement therein that a complaint could be drawn under the Federal Civil Rights Act, the case points out that stating a common law cause of action for false arrest or false imprisonment does not bring the matter within federal jurisdiction unless there are further allegations that the purpose of the arrest was to discriminate between persons or classes of persons. The case points out that a general allegation that an arrest or other action is for the purpose of denying plaintiff his rights, privileges and immunities under the Constitution is not sufficient unless supported by the complaint as a whole. We urge the court that the complaint as a whole does not state facts supporting that sort of allegation in our case. The *Agnew* case is further restrictive in showing that a federal question must first be presented (*i.e.,* jurisdiction acquired) before the declaratory judgments act, 28 U. S. C. A., Section 2201 *et seq.* [relied on Applt's. Op. Br. pp. 3 and 9 as a jurisdictional basis] comes into play.

We note that those cases collected in his opening brief at pages 13 and 14 under point IV(B) are cited to support plaintiff's most palatable contention. Although the cases, broadly speaking, support the point there made, they do not support the application of that rule to the Amended Complaint. *Davis v. Turner* (C. A. 5th, 1952), 197 F.

2d 847, involves an improper arrest by a sheriff, not judicial action by a court. Further, there are factual allegations of physical violence causing physical damage as opposed here to the normal product of a judiciary, to wit: the decision of cases—decisions which have, in instances, been carried to the Supreme Court of the United States and certiorari there denied. *Condra v. Leslie & Clay Coal Co.* (D. C. E. D., Ky., 1952), was a case involving strikers and their right as a group to be protected from illegal company action. It is not in point here. *Baldwin v. Morgan* (C. A. 5th, 1958), 251 F. 2d 780, was a class action by Negros and again, is not in point here. The opinion as reported in *Stinnet v. Mills* (C. A. 10th, 1958), 259 F. 2d 272, cryptically states the judgment is reversed as to costs without written opinion. Nothing is said regarding the case in chief.

The remainder of the cases cited by plaintiff do not, in our opinion, affect the merits of the jurisdictional question. We would point out that, although the merits of the Amended Complaint are not to be determined in this appeal, the merit of the same as to raising a federal question must be so determined since diversity of citizenship is admittedly not present. The existence of a federal question under the factual allegations of the Amended Complaint becomes a necessity if the lower court is to have had jurisdiction.

VI.

**The Federal District Court's Power to Enjoin California Courts Depends Upon a Jurisdictional Base for the Main Action Plus an Exercise of Its Discretion in That Regard.**

The heading explains itself in that either a preliminary or final injunction would be logically and legally impossible unless there were proceedings pending which the injunction would assist. Thus, unless the other causes of action conferred jurisdiction on the lower court, it would be futile for plaintiff to press for recognition of his Fifth Cause of Action. We have already discussed the substance of those other causes of action and stated our conclusion that they are insufficient for jurisdictional purposes.

Additionally, we point up the reluctance of federal courts to issue injunctions directed against state courts particularly where, as here, the entire subject matter of the federal action has been gone into time and time again in the state court. Principles of comity and economy show the felicitous nature of this rule. The case of *Sexton v. Barry* (C. A. 6th, 1956), 233 F. 2d 220, 224-226, supports this rationale.

VII.

**The Habeas Corpus Proceedings Having Been Carried to United States Supreme Court No Longer Fall Within the Jurisdictional Ambit of the Federal District Court.**

Judicial records open to and before this court show that Stafford has pursued his remedy for alleged invasion of his constitutional rights by virtue of the California contempt judgment and denial of his petition for Writ of *Habeas Corpus* up to the United States Supreme Court

which has denied him certiorari. If a proper federal question had appeared it may be assumed said court would have given Stafford relief. (See *In re Stafford,* 160 Cal. App. 2d 110, 324 P. 2d 967, cert. den. 358 U. S. 913, 942, and allied litigation in the Department of Public Works cases, listed *supra* as numbers 7, 8, 9, and 10, pages 9-10.

Further the Amended Complaint on its face shows that procedural due process was accorded plaintiff as to his petition for *habeas corpus* [Amended Complaint, Pars. XXXXI-XXXXVI, T. R. pp. 50-52] and the supposed questions raised by prior proceedings were not within the scope of that proceeding (*In re Stafford,* referred to above; *Geach v. Olsen* [C. A. 7th, 1954], 211 F. 2d 682, 684).

Aside from the foregoing, the regularity of the contempt judgment and the denial of the petition for *habeas corpus* is beyond cavil based on the frequency of plaintiff's reiteration of the same contentions to California courts after receiving appropriate warning to desist (*Schemaitis v. Reid* [C. A. 7th, 1944], 193 F. 2d 119, 120). See opinion of Shinn for the California District Court of Appeals in *Coburg Oil Co. v. Russell,* 136 Cal. App. 2d 165, 168 (hearing denied California Supreme Court) where in it was said:

> "We may observe, however, that it would seem to be in order for the trial courts to place Mr. Stafford under appropriate restraint and thus cause him to divert his energies into some profitable channels." (136 Cal. App. 2d 168.)

## VIII.
## Conclusion.

We submit that plaintiff has failed to allege sufficient facts in his Amended Complaint to confer jurisdiction on the lower court. The protracted litigation summarized by case citation, *supra,* pages 8-10, is evidence of the care and consideration plaintiff has received from the California courts. In an ordered society one need not agree with judicial decisions but one must be willing to abide by them. Plaintiff has misunderstood the extent of his civil rights as guaranteed by federal legislation when he assumes that they present here a basis for review of the considered action of California courts. Without disrespect to the sincerity of plaintiff's feelings, we suggest that he has had his day in court.

Respectfully submitted,

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